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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,679

04/08/2004

Ian Hunter

65689CPDV(43382)

8534

21874

7590

07/09/2009

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EXAMINER

SODERQUIST, ARLEN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

07/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/820,679</p>	<p>Applicant(s) HUNTER ET AL.</p>	
	<p>Examiner Arlen Soderquist</p>	<p>Art Unit 1797</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3-10 and 12.
Claim(s) withdrawn from consideration: 14-16.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Arlen Soderquist/
Primary Examiner, Art Unit 1797

Continuation of 3. NOTE: Examiner cannot see the basis for registering the array of transfer members with the top-most through-hole array. Additionally, the scope of the new claims does not on its face overcome the problem of the spacing between registered arrays, the hydrophobic and hydrophilic properties required for preventing contamination between adjacent through-holes the arrays and the defined orientation of the registered array.

Continuation of 11. does NOT place the application in condition for allowance because: of the reasons of record and the following additional comments. Regarding the requirement for the hydrophobic/hydrophilic characteristics to be specified, examiner notes that in the case of a system that does not have the different surface properties it is difficult, if not impossible to prevent the spread of liquid through capillary action between the respective arrays. A non-capillary spacing between the arrays would be expected to prevent a fluid bridge from forming and would result in the fluid transfer through fluid droplets falling between the arrays. Thus, since the spacing between the arrays is capillary, fluid flow between outside of the through-holes based on capillary principles would be expected to occur. Thus one cannot protect contamination between adjacent holes without the hydrophobic surfaces between the hydrophilic through-holes. Applicant has argued that the spacing between the through holes can be increased to prevent the contamination, however, if one has an orientation that the alignment of the through-holes is anything different from vertical, the spacing between through-holes will not prevent contamination from occurring. Even if the alignment, is vertical, there is no teaching that would give one of ordinary skill in the art an indication of how far apart the through-holes need to be to prevent contamination. The problem of determining the proper spacing is not a simple problem since it depends upon both the properties of the liquid and the arrays. It may also be affected by the properties of the transfer members as well. For example, a transfer member that is nearly the same diameter as the diameter of the through-hole may create a situation where fluid transfer between registered through-holes is essentially in one direction because the transfer member blocks fluid flow in the second direction. However, if the transfer member diameter is significantly smaller than the diameter of the through-hole fluid transfer between registered through-holes may be in two directions and may be facilitated by the outer surface of the transfer member. It appears that applicant is arguing that the level of skill of one of ordinary skill in the art is higher than examiner used in examining the claims.

Continuation of 13. Other: the amendment to the specification does not correspond to the change in figure 11. Either the specification needs to be changed to identify the correct element as number 127 or the drawing needs to be changed by switching the reference numbers for elements 127 and 128.